

1 UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF NEW YORK

3 - - - - - X  
4 BLACK LOVE RESISTS IN THE RUST 18CV719  
By and through its Co-directors  
Natasha Soto and Shaketa Redden  
And on behalf of its members  
Agent of Just Resisting, et al)  
Plaintiffs

6 vs.

7 Buffalo, New York  
CITY OF BUFFALO, ET AL, ) May 11, 2021  
8 Defendant. 12:00 p.m.  
- - - - - X

9 **STATUS CONFERENCE**

10 **ALL PARTIES APPEARED USING THE ZOOM FOR GOVERNMENT  
PLATFORM**

11 **Transcribed from an Electronic Recording Device**

12 TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE CHRISTINA CLAIR REISS  
13 UNITED STATES DISTRICT JUDGE

14 EDWARD KRUGMAN, ESQ.  
15 CLAUDIA WILNER, ESQ.  
National Center for Law and Economic  
Justice

16 DARIUS CHARNEY, ESQ.  
17 ANJANA MALHOTRA, ESQ.  
Center for Constitutional Rights

18 KEISHA WILLIAMS, ESQ.  
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22 ROBERT EMMETT QUINN, ESQ.  
23 City of Buffalo Department of Law  
65 Niagara Street  
24 Buffalo, New York 14202  
Appearing on behalf of the Defendant

25 **COURT REPORTER: Karen J. Clark, Official Court Reporter  
Karenclark1013@AOL.com**

09:43:47 1

P R O C E E D I N G  
\* \* \*

09:45:43 2

09:45:43 3 THE CLERK: We're here in the matter of the  
09:45:45 4 Black Love Resist, et al versus the City of Buffalo, et  
09:45:48 5 al, docket No. 18CV719. This proceeding is scheduled  
09:46:01 6 for a status conference. Counsel for the Plaintiffs,  
09:46:54 7 please state your name and who you represent for the  
09:46:59 8 record. Plaintiffs?

09:47:05 9

Mr. Krugman, you're on mute.

09:47:10 10

09:47:13 11 MR. KRUGMAN: I am now unmuted. I used to  
know how to do this. Good afternoon, your Honor.

09:47:16 12

09:47:22 13

MS. WILNER: And I'm Claudia Wilner, also  
09:47:25 14 from NCLAH.

09:47:33 15

MR. CHARNEY: Darius Charney. Good  
09:47:33 16 afternoon, your Honor, I am also representing the  
09:47:38 17 Plaintiffs.

09:48:06 18

MR. QUINN: Robert Quinn representing the  
09:48:11 19 defendants. Good afternoon, your Honor.

09:48:14 20

THE COURT: Good afternoon. I have read the  
09:48:39 21 Plaintiff's status report on discovery. I've gone  
09:48:43 22 through my notes. I am not adverse to changing  
09:48:54 23 something that isn't working, and we have taken an  
09:48:57 24 approach in this case which is contemplated by the  
09:49:00 25 amendments to the Federal Rules of Civil Procedure where

09:49:03 1 the Court gets more actively involved in managing a  
09:49:08 2 case. I can't say that I feel like that has been  
09:49:13 3 successful. So, when in doubt, follow the rules. And  
09:49:19 4 the next step will be motions to compel to the extent  
09:49:26 5 they haven't already been filed and orders with hard  
09:49:30 6 deadlines and sanctions if we can't get off this current  
09:49:34 7 path. And I don't see a lack of good faith on the part  
09:49:41 8 of the defendants, and I'm going to hear your side of  
09:49:45 9 the story, but if I tell you to do something on X date  
09:49:50 10 and you tell me you can do it for me, that is disobeying  
09:49:55 11 a court order. We're not doing this as suggestions. I  
09:49:59 12 have elicited deadlines, made sure that they were  
09:50:03 13 reasonable, and they have to be real. So I think we're  
09:50:08 14 moving into a shift of a different approach and I  
09:50:13 15 wouldn't sanction anybody *sua sponte*. I definitely want  
09:50:19 16 to hear both sides. But it cannot be a response that we  
09:50:24 17 have a single attorney on the other side and that is  
09:50:27 18 just the way it's going to go. It's just not going to  
09:50:31 19 happen that way.

09:50:32 20 So, I'm going to start with you, Mr. Quinn,  
09:50:36 21 as to your take on where we are. Anything that you want  
09:50:40 22 to say in general in response to the Plaintiff's status  
09:50:46 23 report on discovery and then we're going to get into the  
09:50:51 24 nitty gritty.

09:50:51 25 MR. QUINN: Understood, Judge. And I do

09:50:52 1 appreciate you holding this conference and, I absolutely  
09:50:55 2 do understand your point. And I do want to reiterate or  
09:50:59 3 at least iterate, I haven't had a chance to respond in  
09:51:02 4 full to the status update that was filed late yesterday.  
09:51:07 5 We have been working on this case and producing  
09:51:10 6 discovery throughout, including in the time period since  
09:51:13 7 our last conference. Just since the last conference,  
09:51:17 8 we've produced 26,000 pages of ESI on a consistent basis  
09:51:23 9 I've been in constant communication with the Plaintiffs'  
09:51:27 10 counsel. We've done two depositions, numerous e-mails,  
09:51:30 11 various other documents produced, we produced records  
09:51:49 12 indicating 46,615 commons just in the past two weeks  
09:52:05 13 that took substantial effort to put together. So I  
09:52:08 14 don't want it to seem like we're coming in here sort of  
09:52:12 15 begging for forgiveness. We have been working on this  
09:52:15 16 case and we truly believe that.

09:52:18 17 THE COURT: Who is we, though? Who is we  
09:52:20 18 besides we talked about, you know, what one could  
09:52:24 19 reasonably expect from one human being. Who else is  
09:52:28 20 working on this case?

09:52:29 21 MR. QUINN: We hired an intern who has been  
09:52:31 22 assisting with this case. She is going to be leaving  
09:52:34 23 soon because she is studying for the bar. I've spoken  
09:52:38 24 with my boss about bringing in a new attorney who we  
09:52:42 25 recently hired who has had to do other things, but

09:52:45 1 should have the available time to assist, particularly  
09:52:48 2 with the ESI in this case. Because I don't know that it  
09:52:53 3 was communicated to the Court in Plaintiffs'  
09:52:57 4 communications, but we have retained a vendor, an  
09:53:02 5 outside consultant to assist us with production of ESI.

09:53:07 6 THE COURT: Let me stop you there. What is  
09:53:09 7 the vendor's name?

09:53:11 8 MR. QUINN: D4.

09:53:12 9 THE COURT: D4. And when were they  
09:53:16 10 retained?

09:53:17 11 MR. QUINN: They were retained shortly  
09:53:19 12 after, I don't have the document in front of me, but my  
09:53:22 13 recollection they were retained shortly after the last  
09:53:25 14 conference and there has been production made through  
09:53:28 15 the vendor, through the Relativity system. There was  
09:53:34 16 some hiccups, some snags in producing that.

09:53:37 17 Specifically, we were able to immediately upload the  
09:53:41 18 Outlook files to the Relativity system and process those  
09:53:47 19 and that is what we've been doing. There was difficulty  
09:53:50 20 in uploading these restored, the restored Lotus notes  
09:53:56 21 files, which is the majority of the custodians. Just  
09:54:00 22 this past week, we did resolve that. We had to  
09:54:03 23 physically produce the documents to an individual and  
09:54:09 24 they're in Rochester and then they uploaded them and so  
09:54:22 25 we're on track to produce those things. And there are a

09:54:25 1 couple of things with the deadlines, and I'm sure we'll  
09:54:28 2 get into that. But, I mean, there has been some delays  
09:54:32 3 in producing the accounts, the physical accounts because  
09:54:35 4 we weren't able to upload some of the Lotus notes to the  
09:54:39 5 Relativity. I believe we've done that. And I've  
09:54:41 6 indicated to Plaintiffs' counsel, and I've asked that we  
09:54:45 7 be able to do it on sort of a different time frame  
09:54:48 8 because there is a cost associated with producing  
09:54:50 9 through the Relativity, they have to go through and do  
09:54:53 10 it. Whereas, previously, I was just doing it on my own  
09:54:57 11 and I was producing it sort of day by day. Here there  
09:55:01 12 is a cost to have them do it. So I would like to spread  
09:55:04 13 it out, but we can certainly address that with the  
09:55:07 14 Court.

09:55:07 15 THE COURT: Let's stay on that issue. How  
09:55:09 16 would you like to spread it out?

09:55:12 17 MR. QUINN: Two weeks is what I asked the  
09:55:14 18 Plaintiffs. I asked that we produce it on the 17th and  
09:55:18 19 the 31st of May.

09:55:26 20 THE COURT: And how does that decrease cost?  
09:55:28 21 Does it allow you to batch it?

09:55:30 22 MR. QUINN: It allows us to do larger  
09:55:33 23 batches rather than have the consultant go through each  
09:55:36 24 day or each week or however it was and process it. And  
09:55:40 25 I apologize, I'm not entirely familiar with how they do

09:55:44 1 it. I go through and, sort of, the materials and then  
09:55:47 2 they have to actually produce it with the images and  
09:55:50 3 metadata and all of that. So there is time and cost  
09:55:52 4 associated with that. So spreading out the batches  
09:55:55 5 allows them to cut down on costs.

09:55:57 6 THE COURT: What did the Plaintiffs' counsel  
09:56:01 7 say when you asked to batch it like that?

09:56:03 8 MR. QUINN: I don't know that we got a  
09:56:05 9 response, but I'll defer to Mr. Krugman or whoever is  
09:56:09 10 speaking.

09:56:10 11 THE COURT: Okay. Keep going.

09:56:11 12 MR. QUINN: And so as far as the assistants,  
09:56:15 13 we do have another attorney who is admitted to Federal  
09:56:19 14 Court who has been assisting, but she has her own case  
09:56:23 15 load, so that is also proving not to be ideal.  
09:56:26 16 Hopefully with this new attorney who has been hired  
09:56:30 17 within the past three months, and, like I said, was not  
09:56:33 18 hired to do this type of work and is relatively  
09:56:37 19 inexperienced, but now with the ESI, particularly now  
09:56:40 20 that we have the consultant, they should be able to  
09:56:43 21 greatly increase the speed. Previously, I had  
09:56:46 22 everything on my own laptop. I was limited in having  
09:56:50 23 people assist in the actual production of ESI. Now we  
09:56:54 24 have Relativity, we can have multiple people accessing,  
09:56:58 25 that should greatly impact the speed. As I indicated

09:57:01 1 also to Plaintiffs' counsel, and I don't know that they  
09:57:04 2 responded to this substantively either, I believe we'll  
09:57:08 3 be able to get it done, including the metadata,  
09:57:11 4 including the metadata going back by the end of this  
09:57:23 5 month. Obviously --

09:57:24 6 THE COURT: What is the new attorney's name?

09:57:27 7 MR. QUINN: Dan Muscerella.

09:57:29 8 THE COURT: So you think you're going to  
09:57:31 9 have everything, the ESI done by the end of this month?

09:57:35 10 MR. QUINN: I believe so, yes. I should  
09:57:38 11 clarify. This would be the e-mail ESI for the 20  
09:57:42 12 custodians that previously have been identified. It  
09:57:45 13 would also include much of the non-e-mail ESI. Some of  
09:57:51 14 that stuff is still being worked out, and I'm sure we'll  
09:57:54 15 address it today. But it would just be the initial 20  
09:57:59 16 custodians. And then depending on how the court  
09:58:03 17 considers the additional custodians and also the ECAC  
09:58:08 18 custodians, that would maybe be a different time period.

09:58:13 19 THE COURT: Okay. Anything else that you  
09:58:15 20 want to say before we go point by point through the  
09:58:19 21 issues that the Plaintiffs have raised.

09:58:23 22 MR. QUINN: Just that to reiterate that we  
09:58:27 23 do certainly take the Court -- we treat the Court's  
09:58:31 24 orders very seriously, and we and I are doing our best.  
09:58:37 25 You know, I have taken the approach, and maybe it's not

09:58:40 1 the right one. I mean, I try to work on the discovery  
09:58:44 2 that is being requested of me and there are a lot of  
09:58:47 3 balls up in the air that the Plaintiffs are requesting.  
09:59:06 4 Some that are before the Court in the e-mails, there are  
09:59:10 5 some in separate e-mail chains about additional  
09:59:20 6 discovery. So we're not coming in here and arguing with  
09:59:23 7 every little point that is identified in this large  
09:59:27 8 discovery, specifically some of the tone and things like  
09:59:29 9 that. We do disagree, but ultimately, I am trying to  
09:59:33 10 move discovery forward through production of what is  
09:59:37 11 being requested. And we do have objections and we have  
09:59:40 12 been working with the Plaintiffs to move through those  
09:59:44 13 objections. And I do want to, you know, reiterate that  
09:59:48 14 there is not a day that goes by that I don't work on  
09:59:51 15 this case. And we're going to have other people working  
09:59:54 16 on it to the best we can. So it's not through lack of  
09:59:57 17 attention or lack of effort. And like I said, we've  
10:00:01 18 produced, to date, close to 65, if not more than 65,  
10:00:06 19 just a Bates number, that doesn't include the countless  
10:00:09 20 other communications. It's not that we're not working  
10:00:12 21 forward. It's just that there is a lot being requested  
10:00:15 22 and there is a lot of different issues that we're trying  
10:00:18 23 to work through, so I do want to reiterate to the best I  
10:00:21 24 can.

10:00:21 25 THE COURT: So let me push back on some of

10:00:23 1 that.

10:00:24 2 MR. QUINN: Yes.

10:00:25 3 THE COURT: Because they say you'll say,  
10:00:31 4 "May 7th, I'm getting back to you." May 7th comes and  
10:00:36 5 goes and you don't get back to them. And I say, "Tell  
10:00:40 6 me what you could do." And you say, "I can do this."  
10:00:44 7 And what I say seems to come and go, too, because we  
10:00:49 8 shouldn't even be having this conference, and that is  
10:00:53 9 why I'm ready to start adopting a different approach  
10:00:57 10 because me asking you what is reasonable, okay, now it's  
10:01:03 11 my order, you comply with it. It kind of feels like  
10:01:10 12 you're blowing -- not blowing me off -- but blowing past  
10:01:14 13 what I consider a court order. And the fall back is,  
10:01:20 14 let's do it formal. Let's have it in writing. Let's  
10:01:24 15 have discernable sanctions if things don't go forward.  
10:01:27 16 So what am I missing about those concerns, not telling  
10:01:32 17 the Plaintiffs' counsel, "I'm going to get back to you,"  
10:01:35 18 and then not getting back to them and me approaching you  
10:01:39 19 asking what is reasonable, setting a deadline with your  
10:01:42 20 consent and it's not happening.

10:01:45 21 MR. QUINN: Part of it -- I mean a large  
10:01:52 22 part of it is, I mean, I mean, to the extent I'm over  
12:22:24 23 promising or trying to do things ahead of time, I'm just  
12:22:29 24 juggling a lot of things. I don't want it to seem like  
12:22:32 25 we're ignoring the Court or the Plaintiffs or anyone

12:22:34 1 else. We are trying to set the deadlines that I think  
12:22:38 2 we can comply with. Sometimes things come up and life  
12:22:42 3 comes up and various other discovery requests come up.  
12:22:46 4 And I try to work through them the best I can. When  
12:22:50 5 Plaintiffs, I say, I try to get back to you May 7th, if  
12:22:54 6 I don't get back to them by May 7th, I get back to them  
12:22:59 7 by May 8th or May 9th. I understand the Court, the  
12:23:22 8 Court needs deadlines and the Plaintiffs need deadlines,  
12:23:25 9 and I do my best to try and comply with those where we  
12:23:29 10 can and I do take them seriously. It's not that we  
12:23:32 11 don't. It is, essentially, that, you know, I'm trying  
12:23:36 12 to do my best to comply with them and there is just a  
12:23:40 13 lot going, and maybe sometimes we fall short. Where  
12:23:44 14 that does happen, I try to communicate, to the best of  
12:23:46 15 my ability, why it happened. I try to continue to  
12:23:50 16 communicate, here is what we plan to do. I do  
12:23:54 17 consistently, and I want to reiterate, we're  
12:23:57 18 consistently and constantly working on these things and  
12:24:00 19 we're all working on these things. So could I do a  
12:24:05 20 better job on could I send that e-mail on May 7th rather  
12:24:12 21 than May 8th? I absolutely could. Could I do a better  
12:24:15 22 job of under promising, I probably should. But I'm just  
12:24:19 23 trying to move it forward to the best that we can.  
12:24:22 24 Normally in all of the --  
12:24:23 25 THE COURT: Let me ask you. And I'll push

12:24:26 1 back on the Plaintiffs as well. I certainly was not  
12:24:28 2 getting the impression when they told me that you  
12:24:32 3 weren't getting back to them that they were hearing from  
12:24:36 4 you the next day. I certainly did not get that  
12:24:39 5 impression from their materials. If you promise to get  
12:24:42 6 back to them on May 7th, I'm not under an impression  
12:24:45 7 that it came on May 8th or May 9th. I'm under the  
12:24:50 8 impression that it came not at all. Is that inaccurate?  
12:24:54 9  
12:24:56 10 MR. QUINN: I don't believe that that is  
12:25:00 11 accurate. And I don't think it's fair. Certainly there  
12:25:03 12 are arguments that Mr. Krugman, particularly, is making  
12:25:07 13 about, you know, the sufficiency of our response and  
12:25:12 14 things like that. But, I mean, I'm here working all of  
12:25:15 15 the time. I'm trying to respond as soon as I can.  
12:25:15 15 Often, you know, at non-normal hours. But I don't  
12:25:22 16 believe, and maybe they'll disagree with me, that we  
12:25:26 17 have just ignored them in any way, shape or form. I  
12:25:31 18 mean, we had, just this past -- I probably responded  
12:25:34 19 every single day this past week. We had a long meet and  
12:25:38 20 confer at their request. I did it on a couple day's  
12:25:41 21 notice because I had previously indicated I have some  
12:25:45 22 depositions, that's fine. I am happy to do those  
12:25:48 23 things. I don't think it is, respectfully, I don't  
12:25:51 24 think it's that we're not responsive or not ignoring.  
12:25:55 25 I'm sure they would like us to move faster. I'm sure

12:25:58 1 they do. I don't think it's fair to say we're just  
12:26:02 2 blowing them off.

12:26:03 3 THE COURT: Okay. Let's turn to Plaintiffs.  
12:26:07 4 And we're going to start with your status report and you  
12:26:12 5 can respond to my general concerns. My understanding is  
12:26:18 6 that the first issue was potentially resolved and that  
12:26:29 7 was the, well, I'll let you go through at your own pace.  
12:26:42 8 I've got my notes about what I think is resolved, but I  
12:26:46 9 want to hear from you first.

12:26:49 10 MR. KRUGMAN: Thank you, your Honor. The  
12:26:51 11 first issue is the metadata -- the introductory issues,  
12:26:55 12 I think the Court understands. And I think it has been  
12:27:00 13 abundantly clear today, there is just Mr. Quinn and it  
12:27:05 14 is not enough by a couple of orders of magnitude. And  
12:27:09 15 that is the dominant fact of what has been happening  
12:27:13 16 here. We can -- I'll leave it at that. I was going to  
12:27:24 17 -- I'll leave it at that. I don't want to go further on  
12:27:28 18 specifically on Mr. Quinn.

12:27:29 19 Having said that, the metadata spreadsheet,  
12:27:33 20 you know, is the first issue. It has been now promised  
12:27:36 21 for May 31st. Mr. Quinn has said, and I heard him, that  
12:27:45 22 he does have all of the material going back. It has  
12:27:52 23 been a very, very long time with orders and so forth.  
12:27:57 24 It either will or will not come in on May 31st. We need  
12:28:02 25 it, we would like to have it sooner. We knew we wanted

12:28:07 1 it, we knew we needed it as the ESI started to come in.  
12:28:12 2 And some of those 65,000 pages are 14 copies of  
12:28:18 3 multiple, I mean 14 copies of the same e-mail. So it  
12:28:21 4 depends on how you count and the spreadsheet is the --  
12:28:25 5 you know, getting metadata, getting a spreadsheet like  
12:28:28 6 that is how one handles 14 copies, because, you know,  
12:28:32 7 you have them on a spreadsheet and you only have to look  
12:28:35 8 at them once. So the metadata spreadsheet, he said May  
12:28:40 9 31st. I've heard things before. I've heard May 31st  
12:28:46 10 today. If we get it May 31st, that is May 31st. We'd  
12:28:51 11 like to get it sooner because we'd like to get back to  
12:28:56 12 work on these things, but it is what it is.

12:28:58 13 THE COURT: Okay. Let's stay on this issue.

12:29:00 14 Mr. Quinn, is it going to be May 31st?

12:29:02 15 MR. QUINN: Yes, your Honor.

12:29:03 16 THE COURT: The Court hereby orders the  
12:29:06 17 defendant to produce the metadata spreadsheet no later  
12:29:13 18 than May 31st, and warns the defendant, the failure to  
12:29:15 19 do may subject it to sanctions. Let's take up the next  
12:29:20 20 issue.

12:29:23 21 MR. KRUGMAN: The next issue is the ESI,  
12:29:26 22 generally. And there are a number of sub issues there.  
12:29:33 23 The history, I think as set forth in the status report,  
12:29:36 24 and the Court has indicated it's been read, we did not  
12:29:40 25 realize until early this year that we had not gotten

12:29:47 1 non-e-mail ESI except as attachments to e-mails.

12:29:52 2 THE COURT: But I heard Mr. Quinn say that

12:29:54 3 you are getting some.

12:29:56 4 MR. KRUGMAN: We haven't gotten any yet.

12:29:58 5 THE COURT: Okay.

12:29:59 6 MR. KRUGMAN: He has said he has been

12:30:01 7 gathering it. I did not hear that he has been

12:30:05 8 successful in getting it all gathered from all of the

12:30:08 9 custodians. And, of course, there is the separate issue

12:30:11 10 of the additional custodians. But we haven't gotten any

12:30:15 11 yet, so I don't have a basis for evaluating, if you

12:30:20 12 will, the speed at which we can expect to get it once we

12:30:24 13 get it. I just don't know. I don't have a basis for

12:30:27 14 concluding anything because I don't have any data

12:30:30 15 points. I don't have any of it yet. And the e-mail ESI

12:30:38 16 on the original custodians, we now have lists. Our

12:30:43 17 lists compare with his list. There are, I think, eight

12:30:49 18 custodians left to do. There has not been any e-mail

12:30:52 19 ESI production since the 4th of April. Even before

12:30:56 20 that, he was not meeting three a week. This is just

12:31:00 21 facts. They are facts that have been frustrating.

12:31:07 22 There are potentially reasons for it, and this custodian

12:31:11 23 takes longer and that custodian and so forth, but the

12:31:15 24 facts on the ground are that there has been no e-mail

12:31:18 25 ESI production since the 4th of April. There has been

12:31:22 1 other production. You know, we're doing things that  
12:31:24 2 people do in litigation all of the time. We're looking  
12:31:27 3 at documents and sending followup requests. Some of  
12:31:31 4 those followup requests we've gotten, you know. And  
12:31:35 5 that is what I was that talking about about whack a mole  
12:31:40 6 in the status report. The doing of those followup  
12:31:57 7 requests, and, good, thank you, Mr. Quinn, yes, we've  
12:32:00 8 gotten them, but that gets in the way of doing the other  
12:32:03 9 stuff. That is what it means to be just Mr. Quinn on  
12:32:07 10 the other side and it really has been the dominant fact  
12:32:10 11 of discovery in this case for 18 months.

12:32:13 12 THE COURT: Okay. How do you feel about the  
12:32:17 13 batching?

12:32:18 14 MR. KRUGMAN: I'm comfortable with that.  
12:32:20 15 You know, you know, two weeks, if it ends on May 31st  
12:32:25 16 with what he is now saying with all of the original  
12:32:31 17 e-mail ESI and he is saying non-e-mail, but I can't  
12:32:36 18 evaluate that. I will take batching, that's fine. When  
12:32:42 19 he said batching, to us, we said we need to know  
12:32:45 20 amounts, we need to know intervals and we need to know  
12:32:51 21 an end date. That is still true. I don't know that. I  
12:32:57 22 would love it for the Court to order the same thing for  
12:33:00 23 the non-e-mail ESI on May 31st for the spreadsheet. I  
12:33:05 24 don't know that Mr. Quinn can comply with that. I hope  
12:33:07 25 he can. But I don't know that he can. Because I

12:33:10 1 haven't seen anything on non-e-mail ESI to make an  
12:33:14 2 evaluation.

12:33:14 3 THE COURT: Okay. Back to you, Mr. Quinn.

12:33:18 4 Can your non-e-mail ESI reasonably be completed by May  
12:33:23 5 31st?

12:33:24 6 MR. QUINN: For the custodians, the 20  
12:33:26 7 custodians that have been identified, I believe so.  
12:33:29 8 Now, it does get -- and maybe it might make sense to  
12:33:35 9 explain sort of what's going on. If that includes the  
12:33:41 10 ECAC, these are other things that may come up. If it's  
12:33:46 11 just the custodians, I believe we can produce it by the  
12:33:49 12 31st. Some of the other things, I can't necessarily  
12:33:52 13 make these promises because these are unknown.

12:33:56 14 THE COURT: We're just talking about the 20  
12:33:58 15 custodians, right, Mr. Krugman.

12:34:00 16 MR. KRUGMAN: We have more to talk about  
12:34:02 17 about other things, but, right now, yes.

12:34:05 18 THE COURT: So I will be whacking the mole  
12:34:07 19 and we're going to take one mole at a time. So the  
12:34:11 20 Court hereby orders that non-e-mail ESI for the 20  
12:34:17 21 custodians shall be produced by May 31st. That batching  
12:34:23 22 is permissible according to the intervals proposed by  
12:34:28 23 Mr. Quinn. Failure to comply with that deadline may  
12:34:31 24 subject the defendant to sanctions.

12:34:34 25 Now we're going to take up the next issue.

12:34:39 1 Mr. Krugman?

12:34:40 2 MR. KRUGMAN: Thank you, your Honor. There

12:34:41 3 is the additional custodians and search terms. There is

12:34:47 4 history here. We've laid it out. We started talking

12:34:52 5 with the Court and Mr. Quinn about custodians and search

12:34:55 6 terms in May of 2019. That is two years ago. There was

12:35:00 7 a conference then and the Court said do an initial 20

12:35:04 8 and 20, it will get the ball rolling, and it will happen

12:35:10 9 quickly. There was a motion to compel because it didn't

12:35:13 10 happen and the Court ordered -- made a specific order in

12:35:18 11 December of 2019, and we have now been doing it for 18

12:35:22 12 months. In the meantime, we've been looking at

12:35:26 13 documents. There has been stuff coming in. And we did

12:35:32 14 what one would expect people to do after they get the

12:35:36 15 initial tranche. They look and decide what do they

12:35:40 16 need, what more do they need. We were not in a position

12:35:44 17 to do that because nothing was coming in during 2020.

12:35:49 18 Starting, really, at the end of 2020 and the beginning

12:35:52 19 of 2021, we were able to start looking at things and

12:35:57 20 make some judgments as to what more we needed and we

12:36:01 21 sent Mr. Quinn an additional list. There was a lot of

12:36:04 22 back and forth that I don't think was either Mr. Quinn's

12:36:08 23 favorite conversation or mine, but, eventually we

12:36:11 24 started talking about the -- about the items on that

12:36:17 25 list. And where we came out, and we think it's entirely

12:36:21 1 appropriate, there are 12 additional custodians that we  
12:36:27 2 think we simply need. And we need them now and we've  
12:36:31 3 been through the reasons for them with Mr. Quinn,  
12:36:34 4 perhaps not in as much detail as we think he would like,  
12:36:40 5 plenty of detail, we think these are players. There is  
12:36:43 6 one additional custodian that we gave back. We gave  
12:36:47 7 back the, I think, the D district chief. The E district  
12:36:52 8 chief, which is where, virtually, all of the check  
12:36:55 9 points were, we still want. And there are seven  
12:37:00 10 custodians who are basically line officers. And this is  
12:37:06 11 not the place, I think, to talk about the depositions  
12:37:13 12 past the first 20. We have a long way to go for the  
12:37:17 13 first 20. But part of the way that we intend to, and we  
12:37:21 14 will be talking about this with the Court, part of the  
12:37:23 15 way that we intend to discover and litigate this case is  
12:37:29 16 we will need a spread of people from the BPD at various  
12:37:33 17 levels. One can argue, and have discussions about how  
12:37:36 18 big a spread and who we need and so forth, but seven of  
12:37:41 19 the new custodians were line officers that we want for  
12:37:45 20 one reason or another, eventually. But we said to Mr.  
12:37:49 21 Quinn, and we say it now, we're fine with it, we will  
12:37:53 22 want their ESI before they are deposed and two weeks  
12:37:58 23 before they are deposed. But, excuse me, but if we  
12:38:02 24 don't get that deposition, we won't get the ESI. That  
12:38:07 25 is fine. So what we're down to is 12 additional

12:38:11 1 custodians.

12:38:12 2 For the search terms, most, not all, not  
12:38:15 3 all, but most are looking at documents and saying, okay,  
12:38:19 4 they are talking about hot spots over here and they are  
12:38:22 5 talking about hot pockets over here, and the GIVE  
12:38:26 6 reports talk about hot pockets. We better ask for hot  
12:38:30 7 pockets, too, because we want to make sure that they are  
12:38:34 8 sending, our read of the documents, and I'm showing some  
12:38:38 9 of it to the Court, and there is a lot more, is our read  
12:38:42 10 of the documents is they are putting check points where  
12:39:04 11 they think the crime is. And we've got problems with  
12:39:07 12 that from a Fourth Amendment standpoint. We think that,  
12:39:11 13 notwithstanding, even if they are doing that, they are  
12:39:14 14 still doing it in a racially discriminatory manner.  
12:39:17 15 That is what discovery is about. We're going to try and  
12:39:20 16 prove that.

12:39:21 17 THE COURT: Okay. So here is some concerns  
12:39:23 18 that I have. I can't fault you for being hasty about  
12:39:29 19 it, but it's not going to be helpful to be adding  
12:39:35 20 custodians until we get to the May 31st date. We're  
12:39:38 21 going to stop with that 20 custodians and that has to be  
12:39:42 22 completed. Then, with regard to, I was hoping you  
12:39:49 23 weren't going to tell me another 20, because I would not  
12:39:52 24 have found that reliable. Then with the 12 additional  
12:39:58 25 ones, you are going to decide which ones you can agree

12:40:02 1 to and you're going to bring to me only those people  
12:40:07 2 that you're fighting over. And I want to see the  
12:40:12 3 documents that you are relying on in telling me we need  
12:40:16 4 Officer Jones. So, Officer Jones was at the scene of a  
12:40:20 5 traffic stop on July 4th, you know, blah, blah, blah. I  
12:40:25 6 want to see, because I want to be able to rule on the  
12:40:27 7 papers relevant person needs to get deposed as opposed  
12:40:34 8 to talking through everybody's role in it. So that is  
12:40:37 9 how you're going to bring it to me as a motion to compel  
12:40:40 10 after May 31st. You know, you still have your  
12:40:45 11 obligation to meet and confer. But that is how I want  
12:40:48 12 it served up to me. Any reason why that can't happen?  
12:40:51 13 MR. KRUGMAN: No reason at all, your Honor.  
12:40:53 14 That makes perfect sense to us. I have a question or  
12:40:57 15 two for clarification just to make sure I understand.  
12:41:01 16 Because the Court has said "officers" --  
12:41:06 17 THE COURT: Whoever it is.  
12:41:07 18 MR. KRUGMAN: The officers are the ones  
12:41:09 19 we've given up until we get the depositions. I just  
12:41:12 20 wanted to make sure that was clear.  
12:41:14 21 THE COURT: Okay.  
12:41:15 22 MR. KRUGMAN: And, yes, absolutely, we will  
12:41:17 23 go through that with Mr. Quinn. It's a process we've  
12:41:20 24 started. It's now a process we will complete and we'll  
12:41:23 25 agree where we can and bring it to the Court if we

12:41:27 1 can't.

12:41:27 2 THE COURT: Okay. Mr. Quinn, any reason  
12:41:29 3 that won't work for you? You have a period of abeyance  
12:41:33 4 on these additional custodians until the end of May  
12:41:33 5 31st.

12:41:37 6 MR. QUINN: That sounds entirely reasonable.

12:41:39 7 The one thing I will bring up, Judge, is there is some  
12:41:43 8 overlap with the ECAC e-mails on this specific issue. I  
12:41:48 9 don't know if it makes sense to address that now or  
12:41:51 10 wait. Essentially, they are asking for specific  
12:41:54 11 custodians from ECAC to be searched. I don't know if  
12:41:58 12 that would be inclusive or in addition or what, but  
12:42:02 13 there would be some overlap I can see there.

12:42:05 14 THE COURT: That looks to be the next issue,  
12:42:08 15 so that is a nice segue. Let me go back to the  
12:42:11 16 Plaintiffs.

12:42:11 17 MR. KRUGMAN: Thank you, your Honor. ECAC  
12:42:14 18 is where the data and the analysis and the analysis of  
12:42:20 19 crime is done. And the analysis of pretty much  
12:42:23 20 everything in the BPD. ECAC has six to eight analysts,  
12:42:29 21 we took the deposition of one of them. The only one who  
12:42:33 22 is actually on the BPD pay work. This is, BPD has  
12:42:40 23 outsourced its crime analysis to ECAC. And we learned  
12:42:45 24 some things, but we already knew the grant applications  
12:42:48 25 made it very clear. They are talking about crack downs

12:42:51 1 and targeted interventions and so forth using ECAC data  
12:42:56 2 using hot spot maps. And this has been around since  
12:43:00 3 2019 when we served the subpoena on ECAC. And Mr.  
12:43:04 4 Giannaresi is the chairman of ECAC, wrote back and wrote  
12:43:09 5 a Rule 45, an objection, and said, "I don't have  
12:43:14 6 administrative control of the documents. They are all  
12:43:16 7 of City's." And so we turned to the City, and this is  
12:43:20 8 part of the fourth production that was held in abeyance  
12:43:29 9 after the last conference. And our conversations with  
12:43:31 10 Mr. Quinn, since then, were to go through the subpoena,  
12:43:36 11 and we came to large agreements as to what needed to be  
12:43:41 12 done from a category standpoint. But how to get it done  
12:43:45 13 was a different question. When Mr. Joachim took the  
12:43:53 14 Masselon deposition, I was there. We learned more on  
12:43:56 15 how ECAC is structured and we were able to come to the  
12:44:03 16 following judgment. ECAC, all by itself, doesn't matter  
12:44:10 17 unless it told something to the BPD. But it told a lot  
12:44:16 18 to the BPD and it told it every day and it's all of the  
12:44:20 19 data and it's all of the data that we think and we've  
12:44:25 20 got lots of documents and we gave the Court one example,  
12:44:47 21 but there are millions more of documents indicating that  
12:44:49 22 this is how they determine check point location, this is  
12:44:53 23 how they determine patrol areas, this is how. And we'll  
12:44:57 24 get to the -- and the compstat reports, you know, also,  
12:45:04 25 the redaction issue there is based on ECAC information.

12:45:12 1 Those social media pages are ECAC social media pages  
12:45:16 2 that they provide to the BPD. And what you see is black  
12:45:20 3 face after black face after black face. And you don't  
12:45:24 4 see any white faces. And this is all -- this is all  
12:45:29 5 part of what ECAC is, the guts of this. ECAC is where  
12:45:34 6 the data lives. This case is about lots of things, but  
12:45:37 7 one of the things it's about is data. And so that is  
12:45:41 8 where we've been. What we have asked for is the  
12:45:47 9 communications back and forth between the BPD and ECAC  
12:45:52 10 and we've limited it to the analysts, and Mr. Giannaresi  
12:46:00 11 regarding the search terms because the search terms are  
12:46:03 12 how you identify things that are relevant to this case.  
12:46:06 13 And there are those search terms, and I think, I think  
12:46:10 14 there may have been eight more that are variants of  
12:46:14 15 those search terms that, knowing what we know about  
12:46:18 16 ECAC, we think those things would be relevant. And they  
12:46:23 17 have a vendor, they -- ECAC e-mail, you know, they know  
12:46:30 18 who the people are. They have their e-mail addresses.  
12:46:33 19 You know, that is something that mechanically, I've been  
12:46:38 20 doing ESI discovery for a very long time, mechanically  
12:46:42 21 you tell the vendor this is what needs to be done and  
12:46:45 22 you give it to the vendor and the vendor does it. And  
12:46:49 23 we have the parameters listed in the status report.  
12:46:54 24 I've looked at that. I don't see how to limit it any  
12:46:57 25 further.

12:46:58 1 THE COURT: So let's stay on that issue and  
12:47:00 2 let me hear from Mr. Quinn.

12:47:03 3 There is, according to the Plaintiffs, a  
12:47:06 4 targeted ECAC request. All you would do is feed it to  
12:47:11 5 your third-party vendor. It would accomplish it. And  
12:47:14 6 we would take care of that issue. What is wrong with  
12:47:18 7 that proposition?

12:47:20 8 You're muted, Mr. Quinn.

12:47:24 9 MR. QUINN: I apologize, Judge. There was a  
12:47:28 10 lot there. I apologize. On that specific issue, I  
12:47:30 11 mean, it's probably good to just talk about the way this  
12:47:34 12 is all laid out, if I could, for a second. Now, ECAC  
12:47:38 13 serves a number of different -- serves is maybe not the  
12:47:41 14 right term -- it works with a number of different  
12:47:44 15 entities; the district attorney's office and other  
12:47:47 16 municipalities in the area.

12:47:49 17 THE COURT: I know what it is because even  
12:47:51 18 in little Vermont, we have that.

12:47:53 19 MR. QUINN: Understood.

12:47:54 20 THE COURT: Then tell me why this -- let's  
12:47:57 21 stay on the request. You've got the parameters we.  
12:48:03 22 Want the analysts and Mr. Giammaresi, and we've got the  
12:48:07 23 search terms, feed it to the third-party vendor, they  
12:48:11 24 are going to do it. What is the problem?

12:48:12 25 MR. QUINN: It's, as far as the e-mails, and

12:48:15 1 it's maybe -- I didn't mean to -- as far as the e-mails  
12:48:18 2 go, the e-mails, to the extent that those e-mails are on  
12:48:22 3 BPD servers, which some of them are and some of them are  
12:48:26 4 not, there are Sheriffs that work with the department  
12:48:29 5 that don't have BPD e-mails. Some of the analysts do  
12:48:33 6 have BPD e-mails. I don't believe they have been  
12:48:37 7 identified by Plaintiffs. They are not City of Buffalo  
12:48:58 8 employees. But, to search those e-mails, it would be no  
12:49:02 9 different than doing a custodian search for the other  
12:49:05 10 e-mails. That is why I brought it up earlier as to  
12:49:08 11 whether or not that would be included in the e-mail  
12:49:10 12 custodians, the additional e-mail custodians or not, so  
12:49:15 13 --  
12:49:15 14 THE COURT: So let me ask this. That is a  
12:49:17 15 good clarification. I got the impression from Mr.  
12:49:20 16 Krugman that he was saying, we're only interested in  
12:49:26 17 what was told to the Buffalo Police Department. Well,  
12:49:33 18 we can get that, not from the Buffalo Police Department,  
12:49:37 19 we can get it based on what was sent. And it seemed to  
12:49:41 20 me like a third-party request. So maybe I am missing  
12:49:44 21 that piece of it. I thought this was something that you  
12:49:49 22 were going to get the third party to comply with. The  
12:49:55 23 vendor was going to come in and it wasn't going to be  
12:49:58 24 searching "recipient," it was going to be searching  
12:50:02 25 "senders." Mr. Krugman, why don't you correct me?

12:50:05 1 MR. KRUGMAN: I think the answer is yes and  
12:50:07 2 no, your Honor. And so let me unpack it a little bit.  
12:50:14 3 What we were told by Mr. Giammaresi was that all of  
12:50:18 4 their e-mails and all of their computer files were under  
12:50:22 5 the control of the BPD and the City. That is his  
12:50:24 6 formal -- that is what he said in the Rule 45 response.  
12:50:33 7 On that basis, we've been asking the city to produce it.  
12:50:37 8 And what we are asking for is the e-mails in both  
12:50:40 9 directions, but from the -- from the ECAC side and their  
12:50:46 10 internal e-mails, only these individuals, there are, I  
12:50:53 11 think, Ms. Masselon identified, I think seven. It may  
12:50:57 12 have been eight analysts and Mr. Giammaresi. These are  
12:51:00 13 the people, Matt Rono, we know, for example, he is the  
12:51:04 14 guy that does the maps or his boss Kirk Chelburger does  
12:51:10 15 the maps. Ms. Biltetti, I think is her name, who is the  
12:51:15 16 gang analyst. There are the shooting analysts. These  
12:51:19 17 are the people whose e-mail to and from the BPD and  
12:51:24 18 internal e-mails talking about the BPD hitting these  
12:52:11 19 search terms; it's core information.  
12:52:13 20 THE COURT: Okay. So let me push back and  
12:52:16 21 suggest that you start with just not in both directions.  
12:52:24 22 You start with ECAC. You are going to get their  
12:52:28 23 e-mails.  
12:52:28 24 MR. KRUGMAN: Sure.  
12:52:29 25 THE COURT: You're going to know who the

12:52:31 1 recipients are, and then we can narrow the other second  
12:52:34 2 search. So you're not doing it simultaneously from both  
12:52:39 3 ends. You're starting with the core, as you say, and  
12:52:42 4 then when you pick up the recipients, we can target that  
12:52:46 5 further.

12:52:46 6 MR. KRUGMAN: Your Honor, we were not  
12:52:48 7 talking about the recipients at all. And I'm glad the  
12:52:51 8 Court raised that because I want to clarify. We are  
12:52:54 9 talking about only from the ECAC side, from the ECAC  
12:53:00 10 e-mail accounts, but going in both directions. Because  
12:53:03 11 once you're there, you can do both directions. But from  
12:53:06 12 the ECAC e-mail accounts only.

12:53:08 13 THE COURT: Okay. So back to you, Mr.  
12:53:10 14 Quinn.

12:53:11 15 MR. QUINN: Just so I try to understand, and  
12:53:14 16 I apologize for trying to explain it. I do try to mean  
12:53:18 17 to be helpful as opposed to be argumentative. The ECAC  
12:53:23 18 employees, with the exception of Ms. Massillon, so who  
12:53:27 19 was an initial custodian, and her e-mails were searched,  
13:03:00 20 are not City of Buffalo employees, they would be  
13:03:03 21 somebody else's employees.

13:03:05 22 THE COURT: But they said you own this data.

13:03:08 23 MR. QUINN: I believe some of their e-mail  
13:03:10 24 accounts are through the BPD, so I would, theoretically,  
13:03:14 25 be able to do the same type of e-mail search, assuming I

13:03:18 1 got approval from those employees. And I don't know  
13:03:38 2 what that would consist of for the e-mail back and forth,  
13:03:42 3 I would have to do the same type of search that is done  
13:03:46 4 for all of the custodians. It would just be additional  
13:03:49 5 custodians. So it would be -- there is not a central  
13:03:53 6 way to search it, I don't believe, that I could just  
13:04:20 7 search ECAC e-mails to do a search by custodians.

15:54:12 8 THE COURT: Okay. But we've narrowed it to  
15:54:17 9 ECAC custodians, and we got the search terms, and you've  
15:54:23 10 got a third-party vendor, and you have a response that  
15:54:28 11 your client has authority over this, so I don't see any  
15:54:34 12 obstacles to doing it.

15:54:36 13 MR. QUINN: As far as the search terms,  
15:54:40 14 again, these folks work with different cities,  
15:54:44 15 municipalities, things like that. The terms, as I would  
15:54:49 16 understand it, would be the initial 20 terms, and then  
15:54:53 17 also an additional set of, I think, seven terms. And my  
15:54:57 18 guess will be, just knowing that a majority of their  
15:55:02 19 work is not BPD, is not for the BPD, it's for the  
15:55:07 20 combined others, that there is going to be a lot of  
15:55:10 21 information in there that is not pertaining to the  
15:55:12 22 Buffalo Police Department, so I guess my question would  
15:55:16 23 be, how would that be dealt with?

15:55:18 24 MR. KRUGMAN: Your Honor, if I may, I think  
15:55:21 25 we've answered this, and let me be clear. Our request

15:55:26 1 is limited to e-mails to and from BPD e-mail messages to  
15:55:36 2 the ECAC people. So if they are sending an e-mail to  
15:55:45 3 the Cheektowaga Police Department, we don't care, and it  
15:55:46 4 won't show up. But if they copy the e-mail to BPD, it  
15:55:50 5 will show up. Any vendor can restrict a search by  
15:55:54 6 recipient and so forth. And I think they can probably  
15:55:58 7 do the search terms all at once. Vendors I've dealt  
15:56:01 8 with can, whether this vendor can, I don't know, but  
15:56:05 9 once you have a custodian up, you can do all of the  
15:56:08 10 search terms at once.

15:56:09 11 THE COURT: Any vendor should be able to do  
15:56:11 12 that, be able to limit the field that way. All right.  
15:56:16 13 So Plaintiffs, after May 31, are free to give this  
15:56:23 14 request to Mr. Quinn and his team, if you have not  
15:56:30 15 already done so, and I want it completed within 60 days  
15:56:33 16 thereafter.

15:56:34 17 MR. QUINN: That's totally understandable  
15:56:36 18 and fine, Judge. As far as the number of custodians,  
15:56:40 19 the identified custodians, would that be something that  
15:56:43 20 Plaintiff would be doing or how would we handle who was  
15:56:47 21 identified as a custodian?

15:56:52 22 THE COURT: So, it's going to be the  
15:56:56 23 analysts and then Mr. Giannaresi.

15:56:59 24 MR. KRUGMAN: Giannaresi.

15:57:01 25 THE COURT: And it's going to go to any BPD

15:57:06 1 address.

15:57:06 2 MR. KRUGMAN: Yes, any BPD address or any  
15:57:09 3 internal e-mails among them that specifically reference  
15:57:12 4 the BPD.

15:57:13 5 THE COURT: Okay. The search on either end  
15:57:15 6 is going to have some component of BPD in it and that  
15:57:20 7 should limit it. If you have a problem when you propose  
15:57:23 8 this to the vendor, you come back to me and let me know,  
15:57:27 9 but this is what they do.

15:57:29 10 MR. KRUGMAN: Thank you, your Honor. And  
15:57:30 11 one additional question, because, if it is the case that  
15:57:33 12 there are some of the analysts do not have BPD  
15:57:38 13 addresses, if Mr. Quinn can let us know and we'll simply  
15:57:42 14 renew the subpoena to ECAC.

15:57:45 15 THE COURT: Okay.

15:57:46 16 MR. QUINN: And one last question, I  
15:57:47 17 apologize. As far as the time period, I don't know that  
15:57:51 18 these people have continuously been employed by ECAC.

15:57:55 19 MR. KRUGMAN: I'm not sure of the question,  
15:57:57 20 but I think we could probably talk about which one we're  
15:58:00 21 doing when in the context of the Court's order.

15:58:02 22 THE COURT: No. I think he is talking about  
15:58:05 23 the time frame for the parameters. So you don't care  
15:58:09 24 about what happened in 1999. You want a time frame. Is  
15:58:15 25 that what you're asking, Mr. Quinn?

15:58:17 1 MR. QUINN: Correct, Judge. Yes, thank you.

15:58:18 2 MR. KRUGMAN: Your Honor, our basic time  
15:58:21 3 period is January 1 2012 to the present, and that is  
15:58:28 4 true for all of the reasons. It's always been true and  
15:58:32 5 it's true here.

15:58:32 6 THE COURT: You should put that in your  
15:58:34 7 request as well.

15:58:35 8 MR. KRUGMAN: Will do.

15:58:36 9 MR. QUINN: Thank you, Judge.

15:58:37 10 THE COURT: I think I have another case at  
15:58:39 11 1, so we're going to go through the next issue, which I  
15:58:44 12 believe is the fifth set of requests for production.  
15:58:49 13 And it looks to me like 95 to 96 is resolved. And I'm  
15:58:56 14 just checking with Plaintiffs that that has been  
15:58:58 15 resolved.

15:58:59 16 MR. KRUGMAN: Your Honor, Mr. Charney will  
15:59:02 17 pick this part up.

15:59:04 18 MR. CHARNEY: Yes, your Honor. It has been.  
15:59:06 19 We, of course, we need to go back and check through the  
15:59:10 20 production because the production, I believe, was made  
15:59:12 21 on Friday, the most recent production, and we will  
15:59:15 22 follow up with Mr. Quinn if we have questions. And for  
15:59:19 23 your purposes, it is resolved, those two.

15:59:22 24 THE COURT: All right. RFP 97 through 99,  
15:59:36 25 and this is for depositions that were noticed for

15:59:43 1 February, March, and March of 2021. So let's hear from  
15:59:50 2 you Mr. Quinn about these requests.

15:59:53 3 MR. QUINN: I'm not -- I wasn't entirely  
15:59:58 4 clear on what is being requested in this one. We've had  
16:00:02 5 discussions as far as the RP, the fifth one, there are a  
16:00:07 6 number of issues going on, so I know Plaintiffs have  
16:00:09 7 said they've limited things, but I'm not exactly sure  
16:00:13 8 from reading this if I understand what the outstanding  
16:00:16 9 issues are.

16:00:18 10 THE COURT: Okay. And in the interest of  
16:00:20 11 time, here is what's going to happen. You are going to  
16:00:26 12 see if you can resolve this. If you can't, you have an  
16:00:29 13 obligation under the rules, but I'm also ordering you to  
16:00:33 14 narrow the dispute. If you can't resolve it, I want a  
16:00:37 15 motion to compel, which I am likely to decide on the  
16:00:41 16 papers and a response, and I will issue an order and I  
16:00:47 17 will set forth a deadline. And you should be very  
16:00:49 18 specific about what you're requesting and why. And if I  
16:00:54 19 need to see a document to determine relevancy, you  
16:00:58 20 should be supplying that document. I don't need 400  
16:01:01 21 pages of documents. I want to be able to address this  
16:01:04 22 quickly.

16:01:05 23 Let's move onto RFP 97. And I think that  
16:01:11 24 might be in the same series, so I'm going to pass by  
16:01:14 25 that.

16:01:17 1 RFP 100. Let's hear from Plaintiffs.

16:01:31 2 MR. CHARNEY: Yes, your Honor. This request

16:02:32 3 pertains to documents related to BPD officers who appear

16:02:36 4 on a list that the Erie County District Attorney has

16:02:39 5 created of officers with, you know, misconduct histories

16:02:44 6 and testimonial credibility problems. Three of the

16:02:48 7 officers on that list are officers from the strike

16:02:51 8 force, which, as your Honor is aware, is a serious focus

16:02:54 9 of this litigation. Two of those three, we have already

16:02:58 10 noticed for deposition. So we have asked for documents

16:03:02 11 in the City's possession relating to this list or any

16:03:06 12 communications that the district attorney has had with

16:03:09 13 the BPD about this list. We know for, at a minimum,

16:03:14 14 there was some communications about one of the officers

16:03:17 15 on that list, Officer Hassett that we mentioned but the

16:03:20 16 other two, Officer Zach and Officer Hy, we have not

16:03:25 17 received any documents related to them, so we are

16:03:28 18 seeking documents related to those two officers and the

16:03:31 19 concerns raised about them by the district attorney.

16:03:35 20 THE COURT: So we're talking about officers,

16:03:38 21 all members of the strike force, that's it at this

16:03:41 22 point.

16:03:42 23 MR. CHARNEY: Yes.

16:03:42 24 THE COURT: All right. Mr. Quinn.

16:03:44 25 MR. QUINN: Just as far as the -- I didn't

16:03:46 1 understand why these three individuals were identified  
16:03:48 2 as opposed to somebody else. It doesn't appear they  
16:03:51 3 have any connection with any of the named Plaintiffs. I  
16:03:54 4 don't see any specific allegations of these Plaintiffs  
16:03:57 5 in the Complaint, so we did object on those grounds.  
16:04:21 6 With that said, largely, the back and forth on this has  
16:04:24 7 been such, a search would be done and what method would  
16:04:27 8 a search be done for the information they are  
16:04:30 9 requesting. Now I understand it, to some extent, if  
16:04:33 10 they depose these individuals, wanted to ask these  
16:04:36 11 questions, but in the abstract, we did object of why  
16:04:40 12 these individuals were identified and how would the  
16:04:42 13 search be done.

16:04:43 14 THE COURT: So they are strike force members  
16:04:45 15 or that is the allegation and there is allegedly a list,  
16:04:51 16 right?

16:04:52 17 MR. QUINN: Correct.

16:04:52 18 THE COURT: And somebody is communicating  
16:04:57 19 with the district attorney about these individuals,  
16:05:00 20 correct?

16:05:01 21 MR. QUINN: That I'm not sure. I know there  
16:05:05 22 was a letter that went, which was provided to me by  
16:05:08 23 Plaintiffs' counsel, identifying certain individuals.

16:05:10 24 THE COURT: So, realistically, whoever is  
16:05:13 25 talking to the district attorney about credibility

16:05:16 1 issues is not the administrative assistant for some HR  
16:05:24 2 director. It's going to be somebody at the top of the  
16:05:26 3 organization. Agreed?

16:05:30 4 MR. QUINN: Likely, yes.

16:05:31 5 THE COURT: And you would be searching for  
16:05:36 6 these names from those key people to the district  
16:05:44 7 attorney and it would be after this list was devised.

16:05:48 8 Would I have that right, Mr. Charney?

16:05:50 9 MR. CHARNEY: That's correct. I think the  
16:05:53 10 one, kind of, complication is we don't know exactly when  
16:05:56 11 the list was devised. We know we learned of it just  
16:06:00 12 last fall. But, you know, the correspondence that I  
16:06:03 13 referred to earlier regarding Officer Hassett was from  
16:06:08 14 April of 2019. It could be that the list is from before  
16:06:12 15 April of 2019, and, you know, we learned of the list, as  
16:06:15 16 I said, through reporting by the local media. And, you  
16:06:20 17 know, so we don't actually have the physical list in our  
16:06:23 18 possession. So it's hard to know exactly when it was  
16:06:27 19 created.

16:06:28 20 THE COURT: And you've requested the  
16:06:35 21 physical list?

16:06:36 22 MR. CHARNEY: Well, Mr. Quinn said it was in  
16:06:38 23 the possession of the district attorney, so we would  
16:06:40 24 have to subpoena it from them, which we're prepared to  
16:06:43 25 do. We were more interested in how the BPD responded

16:06:47 1 with respect to these three individual officers, which  
16:06:52 2 has been the focus of our inquiry thus far. We, of  
16:06:55 3 course, are prepared to subpoena the list, if we need  
16:06:58 4 to.

16:06:58 5 THE COURT: So I would like you to subpoena  
16:07:01 6 the list. I don't care whether you do discovery or not.  
16:07:06 7 But if we are tailoring things, you should be getting a  
16:07:09 8 list, it should be redacted to eliminate anybody who  
16:07:14 9 hasn't been on the strike force because it's not  
16:07:16 10 relevant, and that is going to give you your time frame,  
16:07:20 11 and it's going to substantially help Mr. Quinn narrow  
16:07:25 12 potential custodians and make sure that we get  
16:07:28 13 responsive documents.

16:07:32 14 MR. CHARNEY: Understood, your Honor.

16:07:33 15 THE COURT: So that issue we're going to  
16:07:35 16 just postpone until the initial work has been done. If  
16:07:41 17 you can't resolve it, you're going to file a motion to  
16:07:44 18 compel, give me the materials that I need to decide it  
16:07:47 19 and I'll go from there.

16:07:50 20 Anything else that we can take up in the  
16:07:53 21 very limited time we have left?

16:07:56 22 MR. KRUGMAN: Your Honor, one very fast  
16:07:58 23 point of clarification on the May 31st, and the original  
16:08:01 24 20. There are some custodians yet to be searched, and  
16:08:07 25 my question is, does that include the additional terms

16:08:12 1 for those custodians, because, to us, it would make  
16:08:17 2 sense to do that all at once or does it not? It's a  
16:08:20 3 clarification question because I just wanted to make  
16:08:22 4 sure that we knew where we were.

16:08:26 5 THE COURT: Let me ask Mr. Quinn for his  
16:08:28 6 response because he is going to be producing the  
16:08:30 7 documents.

16:08:32 8 MR. QUINN: Just so I'm clear, the question  
16:08:34 9 is whether or not additional terms for the existing  
16:08:48 10 custodians would be searched by May 31st.

16:08:51 11 MR. KRUGMAN: Yes, whether the additional  
16:08:54 12 terms for those custodians under the map for the ones  
16:08:58 13 you haven't done yet could be searched.

16:09:02 14 MR. QUINN: I will attempt to do so. It  
16:09:05 15 would -- it would consist of us going back to the  
16:09:08 16 previously searched custodians, so there would be an  
16:09:11 17 additional time, I'll try and do the search at the same  
16:09:14 18 time, but I think it will add some time that I don't  
16:09:17 19 know that I could tell you and sit here today it would  
16:09:20 20 be done by the 31st.

16:09:21 21 MR. KRUGMAN: Your Honor, if I may, what I  
16:09:23 22 had in mind was I knew that custodians who he has  
16:09:28 23 basically completed, he couldn't add more to for May  
16:09:33 24 31st. The one he hasn't completed it, seems to me this  
16:09:36 25 is almost free. You just add some search terms and then

16:09:40 1 we'll deal with the ones who he has completed for the  
16:09:43 2 additional search terms and part of the post May 31st  
16:09:48 3 process that your Honor described, that is what I had in  
16:09:53 4 mind.

16:09:53 5 THE COURT: As far as the Court's order, the  
16:09:56 6 additional terms are not included. I'll agree with you,  
16:09:59 7 it's a twofer for him because I'll be right back on the  
16:10:03 8 issue after May 31st, so he may decide to include those  
16:10:06 9 search terms and get it done with. But, as the way the  
16:10:10 10 issue was framed up for the Court, it was original  
16:10:13 11 custodians and original search terms, and that is what I  
16:10:17 12 ordered. And we're going to stay on that issue. All  
16:10:17 13 right?

16:10:20 14 I'm out of time. And I'm going to let you  
16:10:24 15 all go and I will probably be hearing from you soon. If  
16:10:30 16 I don't, it's probably a good sign. Okay.

16:10:33 17 MR. KRUGMAN: Thank you, your Honor.

16:10:33 18 MR. CHARNEY: Thank you, your Honor.

16:10:34 19 MR. QUINN: Thank you.

16:10:35 20 MR. KRUGMAN: Have a good afternoon.

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3                   CERTIFICATE OF REPORTER

4  
5       I certify that the foregoing is a correct transcript  
6       of the record to the best of my ability of proceedings  
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